

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CLYDE DALE EVANS

§

VS.

§

CIVIL ACTION NO. 1:08cv904

BEAUMONT USP, ET AL.

§

MEMORANDUM OPINION AND ORDER

Plaintiff Clyde Dale Evans, an inmate in the Federal Bureau of Prisons, proceeding *pro se*, brought this lawsuit complaining of prison conditions.

Discussion

Plaintiff paid the full \$350.00 filing fee in this action. Accordingly, plaintiff was ordered to serve the defendants in accordance with Rule 4. Plaintiff has filed a motion to proceed *in forma pauperis* seeking to have the defendants served without paying costs (docket entry no. 25).

Analysis

Under Federal Rule of Civil Procedure 4(c)(3), the court must direct the United States Marshal to effect service in cases where the plaintiff has been authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915.

As stated above, however, plaintiff is not proceeding *in forma pauperis* in this action. Thus, the court is not obligated to appoint the United States Marshal to effect service. Plaintiff is responsible for service of process in accordance with FED. R. CIV. P. 4.

Plaintiff asserts that he lacks adequate funds to serve the defendants. However, a review of the financial information provided reveals plaintiff currently has more than \$80.00 in his prisoner

account. Additionally, plaintiff has received \$1957.20 in deposits to his prison account within the last six months. Accordingly, it is the opinion of the court that plaintiff has sufficient funds to prosecute this action by serving the defendants. Therefore, plaintiff's application to proceed *in forma pauperis* should be denied.

While the court has declined to order the Marshal to serve the defendants, plaintiff is not prohibited from contacting the United States Marshal's Office, requesting the fee schedule for service of process, and requesting service of process.

O R D E R

For the reasons set forth above, plaintiff's motion to proceed *in forma pauperis* for service of process should be denied. It is therefore

ORDERED that plaintiff's motion to proceed *in forma pauperis* for service of process is **DENIED**. Plaintiff has been provided an extension of time through November 23, 2009 in which to serve the defendants. Plaintiff's failure to effect service within the time provided may result in dismissal of this action pursuant to FED. R. CIV. P. 4.

SIGNED this 20 day of October, 2009.



EARL S. HINES
UNITED STATES MAGISTRATE JUDGE